



Dated: December 30, 2016
The following is SO ORDERED:


David S. Kennedy
UNITED STATES CHIEF BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

IN RE: THE HIGHLANDS OF MEMPHIS,
LLC,

Debtor.

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CASE NO.: 16-30025-dsk
CHAPTER 11

IN RE: THE HIGHLANDS OF DYERSBURG,
LLC,

Debtor.

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CASE NO.: 16-30096-dsk
CHAPTER 11

IN RE: REGIONAL HEALTHCARE
SERVICES, LLC

Debtor.

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CASE NO.: 16-30027-dsk
CHAPTER 11

FIFTH INTERIM ORDER GRANTING IN PART DEBTORS' MOTION FOR
EXPEDITED INTERIM AND FINAL ORDERS AUTHORIZING THE USE OF CASH
COLLATERAL TO CONTINUE OPERATIONS OF SKILLED NURSING FACILITIES
AND TO SCHEDULE A FINAL HEARING

This matter came before the Court on December 27, 2016, at the continued hearing on the Debtors' Motion for Expedited Interim and Final Orders Authorizing the Use of Cash Collateral To Continue Operations of Skilled Nursing Facilities (the "**Motion**") filed by The Highlands of Memphis, LLC ("**Memphis**") and The Highlands of Dyersburg, LLC ("**Dyersburg**" and together with Memphis, collectively, the "**Debtors**") requesting Court approval and authorization for the immediate interim and final use of cash collateral pending a final hearing pursuant to 11 U.S.C. § 363 and Rules 4001(b) and 9014 of the Federal Rules of Bankruptcy Procedure. Based upon the allegations in the Motion, the objections to same, and the consent of the parties to the terms of this Order, the Court finds and orders as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. All capitalized terms not otherwise defined herein are as defined in the Motion.
2. Notice. Pursuant to Bankruptcy Rule 4001(b)(1), facsimile, hand delivered, overnight delivered, or electronic notice of the Interim Hearing has been given to at least: (i) the office of the United States Trustee, (ii) Capital Finance, LLC ("**Capital Finance**"), the Debtor's secured lender (as the provider of certain credit facilities to the Debtor, collectively, the "**Capital Finance Loan Facility**") and its counsel, (iii) the Debtors' landlord(s), FC Highlands, LLC, ("**FC Highlands**") and (iv) the unsecured creditors listed on the Debtors' list of the twenty largest unsecured creditors of the Debtors (collectively, the "**Notice Parties**").
3. Jurisdiction. This Court has jurisdiction over the Debtors' case and the parties and property affected hereby pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157, 11 U.S.C. § 363, and Federal Rule of Bankruptcy Procedure 4001. This Court has jurisdiction over the subject matter of this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this Court pursuant to 28 U.S.C. § 1408. The Court possesses the requisite

authority to grant the relief requested herein pursuant to 11 U.S.C. §§ 363, 105 and 1107 of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

4. Purpose and Necessity of Requested Relief. Good cause has been shown for entry of this Fourth Interim Order. The Debtors assert that they require immediate use of cash collateral to operate Debtors' on-going businesses and to fund interim critical cash requirements, including without limitation, to pay wages, maintenance expenses, utility expenses, rent and insurance premiums related to the Debtors' facilities (collectively, the "**Facilities**"), among other things until such time as a final hearing with respect to the Motion (the "**Final Hearing**") may be conducted.

5. Exigency. Because the Debtors must use cash collateral in order to pay for the daily operating expenses of the Facilities, it is necessary and appropriate to consider this Motion on an emergency basis. Prior to a final hearing on the Motion, the Debtors must use cash collateral to meet critical cash requirements on an interim basis to continue the operation of the businesses in order to avoid immediate and irreparable harm to the Debtors. The Debtors' ability to use cash collateral as provided herein to operate is vital to the Debtors' estates and creditors thereof, so that the business need for the Debtors to continue to operate may be met. Absent entry of this Interim Order, the Debtors' estate will be immediately and irreparably harmed.

6. Relief Appropriate. The Court finds that the relief requested is appropriate under the circumstances and hereby enters the following Interim Order:

IT IS HEREBY ORDERED, ADJUDGED, FOUND, AND DECREED that:

- A. Motion Granted In Part. The Motion is hereby granted in part on an interim basis.
- B. Interim Use Authorization. Use of cash collateral is necessary to avoid immediate and irreparable harm to the Debtors' estates for the interim period (the "**Interim**

Period”) ending January 3, 2017, or until a further interim order or a final order is entered in accordance with the terms and conditions set forth below. Attached hereto as Exhibit A is a budget of postpetition expenses that the Debtors allege are necessary to be paid during the Interim Period, subject to the terms of this Order. The Debtors shall provide invoices for each expense (other than payroll) identified in Exhibit A to Capital Finance and FC Highlands at least two (2) business days prior to the proposed date of each payment. Each invoice shall identify the vendor or provider of services, state the amount of the payment sought, and reasonably identify the services or goods that were provided postpetition and for which payment is sought. For payroll, the Debtors shall provide a list of employees and the amounts to be paid to each to Capital Finance and FC Highlands at least two (2) business days before payroll is to be funded. Conditioned upon receipt of the invoices and payroll lists described above, and confirmation that such requests do not include payments of prepetition claims or payments to insiders of the Debtors, Capital Finance shall transfer amounts from the lockbox account to each Debtor’s respective operating account sufficient for the Debtors to make such payments and such funds shall be used only to make the designated payments as set forth in the Budget. Notwithstanding the foregoing, in no event shall the Debtors seek to pay any prepetition claims or any amounts to any insiders of the Debtors during the Interim Period, nor shall the Debtors be authorized to pay any expense that is not identified on Exhibit A during the Interim Period.

C. Capital Finance--Granting of Replacement Lien and Additional Adequate Protection. As and for adequate protection of the use of cash collateral (including but not limited to all collections on accounts receivable), Capital Finance is hereby granted pursuant to 11 U.S.C. §§ 361(2), 363(e) and 552, replacement, post-petition security interests in and liens upon all of the Debtors’ respective assets of the same validity, extent, priority, and type in which

Capital Finance holds prepetition liens or security interests, including without limitation cash collateral and accounts receivable, with such replacement liens having the same extent, validity, and priority as Capital Finance's liens and security interests in its prepetition collateral; provided, however, that the replacement liens shall not attach to causes of action brought pursuant to Chapter 5 of the Bankruptcy Code, including, but not limited to, Section 544, 547, 548, 549, 550, 551 and 553, and the recoveries from any such causes of action.

D. Segregation of Collateral. As additional adequate protection for the interests of Capital Finance, each Debtor shall continue to use and maintain during the Interim Period the existing cash management systems that the Debtors have established with Capital Finance, including but not limited to the existing government accounts deposit account, nongovernment receivable deposit account, operating account, payroll account and lockbox account; provided, however, that Capital Finance shall provide the Debtors with statements and/or an accounting of such accounts from the Petition Date through December 31, 2016, on or before January 15, 2017. Debtors shall not use any funds for any expenses not authorized by this Order, absent further order of this Court, on notice to Capital Finance. The Debtors shall not open any new depository or other accounts without the consent of Capital Finance, and the Debtors shall continue to direct all third party payors, including government entities, to continue to make all payments into the existing accounts at Capital Finance consistent with the parties' prepetition practice.

1. FC Highlands Pledged Escrow. Pursuant to the Fourth Interim Cash Collateral Order and in order to induce Capital Finance to consent to the Fourth Interim Cash Collateral Order, FC Highlands has paid cash in the amount of \$384,660 (the "**FC Highlands Escrow Funds**") for the sole benefit of Capital Finance into a restricted depository account (the "**FC Highlands Escrow**") at CFG Community Bank ("**CFG**"), to

be held in escrow in accordance with the terms of this paragraph. To the extent that the Capital Finance Loan Facility is not repaid and satisfied in full on or before June 30, 2017 from the collections (the “**Collections**”) received by Capital Finance from the accounts receivable of the Debtors that have been pledged by the Debtors to secure the Debtors’ obligations under the Capital Finance Loan Facility after the exercise of “Commercially Reasonable Efforts” by Capital Finance to collect such account receivables, the FC Highlands Escrow Funds shall be released from the FC Highlands Escrow and paid over by CFG to Capital Finance in the amount of the then remaining unpaid balance of the Capital Finance Loan Facility then existing as of June 30, 2017, with any remaining portions of the FC Highlands Escrow Funds held by CFG in the FC Highlands Escrow after the making of such payment of FC Highlands Escrow Funds to Capital Finance to be returned by CFG to FC Highlands. There shall be no other conditions to the payment of the FC Highlands Escrow Funds from the FC Highlands Escrow by CFG to Capital Finance other than that there is a then unpaid balance under the Capital Finance Loan Facility on June 30, 2017 in the amount of the FC Highlands Escrow Funds to be paid to Capital Finance by CFG from the FC Highlands Escrow. No consents or approvals shall be required from FC Highlands or the Debtors to the release by CFG of the FC Highlands Escrow Funds from the FC Highlands Escrow and the payment of such FC Highlands Escrow Funds to Capital Finance in accordance with the terms of this paragraph. For the avoidance of doubt, “**Commercially Reasonable Efforts**” shall not require Capital Finance to commence or pursue litigation, file or pursue any appeals, or file or cause to be filed any cost reports. If the sum of (x) the Collections received by Capital Finance and (y) the amount of the FC Highlands Escrow

Funds disbursed by CFG to Capital Finance in accordance with this paragraph total one hundred percent (100%) of the then outstanding balance of the Capital Finance Loan Facility on June 30, 2017, Capital Finance shall assign to FC Highlands on a non-recourse basis with no representations and warranties, and with no further obligations of Capital Finance to FC Highlands, the loan documents evidencing and securing the Capital Finance Loan Facility, including without limitation the personal guaranty of Denny Barnett, a principal of the Debtors. In accepting any such assignment, FC Highlands shall be deemed to have waived any claims against Capital Finance that Capital Finance has impaired or adversely affected any rights of subrogation or rights of payment of FC Highlands under the assigned loan documents. The Debtors shall have no interests of any kind in the FC Highlands Escrow Funds or the FC Highlands Escrow.

2. Paydown of Capital Finance Loan Facility. The proceeds of Dyersburg's aged accounts receivable for managed Medicaid (the "**Managed Medicaid Payments**"), estimated to be in the aggregate amount of approximately \$268,351 shall be treated as follows:

- a. \$208,561 of Managed Medicaid Payments shall be applied to reduce the Capital Finance Loan Facility;
- b. The next \$59,790 (and any additional amount, together, the "**Balance of the Managed Medicaid Payments**") of the remaining Managed Medicaid Payments shall be held in escrow pursuant to an escrow agreement to be negotiated by the parties and shall be available to fund the Debtors' cash collateral needs, if necessary and to the extent authorized by further order of the Court through January 31, 2017; provided, however, on January 31, 2017 the then unused

Balance of the Managed Medicaid Payments shall be released from escrow and applied to reduce the Capital Finance Loan Facility.

E. Information. As additional protection of the interests of Capital Finance and FC Highlands, the Debtors shall provide the following information to counsel for Capital Finance and FC Highlands:

1. Each Debtor shall provide a printout of its cash receipts journal for the prior day on a daily basis to Capital Finance.

2. The Debtors shall cooperate with Capital Finance and provide Capital Finance and any third party designated by Capital Finance with unrestricted access to the Debtors' books and records (to the extent they are legally permitted to grant such access), including their accounts receivable systems and licenses to use such systems, including for periods after the expiration of this Order; provided, however, that FC Highlands shall have access to such records, to the extent that it is an assignee or subrogee of Capital Finance.

3. FC Highlands will use its commercially reasonable efforts to cause a new operator (the "**New Operator**") to transmit to TennCare and the Tennessee Department of Health, no later than 5:00 p.m. Central Standard Time, Friday, December 30, 2016, New Operator's applications for licenses to operate the Facilities. On receipt, FC Highlands will provide copies of such filings to Capital Finance, the Debtors, the United States Trustee, counsel for CLMG II SPE I, LLC and Healthcare Services Group. FC Highlands will use its commercially reasonable effort to cause New Operator to enter into an Interim At-Risk Management Agreement with Debtors acceptable to Capital Finance. FC Highlands shall transmit an executed copy of an asset purchase agreement for the

Facilities as soon as practicable to Capital Finance, the Debtors, the United States Trustee, counsel for CLMG II SPE I, LLC and Healthcare Services Group.

F. Events of Default. The following shall constitute an event of default under this Order (each an “**Event of Default**”):

1. A Debtor pays an expense during the Interim Period that is not authorized by this Order or by a separate Order of the Court;
2. A Debtor fails to provide timely information and access to information to Capital Finance and FC Highlands as required by this Order;
3. A Debtor’s case is converted to Chapter 7 of the Bankruptcy Code or a Chapter 11 trustee is appointed for any of the Debtors;
4. A Debtor ceases to conduct business or Aria ceases to manage the Debtors’ operations; or
5. A Debtor breaches any of its obligations under this Order.

Upon the occurrence of an Event of Default, the Debtors’ authorization to use cash collateral pursuant to this Order shall terminate immediately and without further notice to the Debtors.

G. Reservation of Rights by Capital Finance, FC Highlands and CLMG II SPE I, LLC. Nothing contained herein shall in any manner waive or prejudice any rights of Capital Finance or FC Highlands under their respective loan documents, the Bankruptcy Code, or the pending objections to use of cash collateral, including but not limited the ability of Capital Finance or FC Highland to seek additional adequate protection, or a determination that either or both party is not adequately protected. Nor shall entry of this order be deemed a waiver of any rights of FC Highlands as landlord under the Master Lease and Security Agreement dated May

11, 2009 (the “**Master Lease**”) or its rights to object to the nonpayment of rent thereunder. CLMG II SPE I, LLC reserves all rights and remedies under its loan documents and the Bankruptcy Code, and nothing in this Order shall be a waiver of such rights and remedies, including its right to approve any new operator or manager of the Facilities.

H. FC Highlands--Granting of Replacement Lien and other Adequate Protection.

As and for adequate protection of the use of cash collateral (including but not limited to all collections on accounts receivable), FC Highlands, and its assigns, including CLMG II SPE I, LLC, is hereby granted pursuant to 11 U.S.C. §§ 361(2), 363(e) and 552, replacement, post-petition security interests in and liens upon all of the Debtors’ assets of the same extent, validity, priority, and type in which that FC Highlands holds prepetition liens or security interests, including without limitation cash collateral and accounts receivable, with such replacement liens having the same extent, validity, and priority as FC Highlands’s liens and security interests in its prepetition collateral; provided, however, that the replacement liens shall not attach to causes of action brought pursuant to Chapter 5 of the Bankruptcy Code, including, but not limited to, Section 544, 547, 548, 549, 550, 551 and 553 and the recoveries from any such causes of action.

I. Reservation of Rights of the Debtors. Nothing contained herein shall in any manner waive or prejudice (i) the right of the Debtors to seek authority from the Court to expend cash collateral for items not included on Exhibit A or (ii) any objection the Debtors may have to the validity of any of the liens and security interests asserted by Capital Finance and/or FC Highlands.

J. Additional Reservation. Nothing in this Order shall be construed as an adjudication of the value of Capital Finance’s or FC Highlands’s pre-petition security or security interests as of the date of the filing of the petition. Nothing in this Order shall be deemed an

adjudication of the extent, validity, and priority of the prepetition security interests of Capital Finance's or FC Highlands. All rights related thereto are reserved.

K. Binding on Successors. The provisions of this Interim Order shall be binding upon all parties in interest in this Chapter 11 case, including, without limitation, Capital Finance, FC Highlands, and the Debtors and their respective successors and assigns (including any Chapter 11 trustee hereafter appointed or elected for the estate of Debtors or any Chapter 7 trustee appointed in a superseding Chapter 7 case), and shall inure to the benefit of Capital Finance, FC Highlands, Debtors and their respective successors and assigns, including as to FC Highlands, CLMG II SPE I, LLC. In no event shall either Capital Finance or FC Highlands have any obligation to consent to the use of cash collateral by any Chapter 7 or Chapter 11 trustee appointed or elected for the estate of Debtors.

L. Continued Interim Hearing. A Continued Interim Hearing on the Cash Collateral Motion is scheduled for **January 3, 2017 11:00 a.m. (CST)** before this Court.

M. Adequate Notice. The notice given by the Debtors of the Interim Hearing was given in accordance with Bankruptcy Rules 2002 and 4001(b)(2) and the local rules of this Court. Under the circumstances, no further notice of the request for the relief granted at this interim hearing was required. The Debtors shall, within two (2) business days of the entry of this Second Interim Order, mail copies of this Fifth Interim Order and notice of the Continued Interim Hearing to each creditor included on the Debtors' list of 20 largest unsecured creditors, Capital Finance, its counsel, FC Highlands, its counsel, and to the Office of the United States Trustee.

Submitted for Entry:

/s/ Timothy M. Lupinacci (w/ permission via email 12/28/2016 by JEB III)

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PARTIES TO BE SERVED:

Debtors
Debtors' Counsel
U.S. Trustee
Debtors' 20 largest unsecured creditors
Capital Finance, LLC
FC Highlands, LLC
CLMG II SPE I, LLC

**EXHIBIT A
BUDGET**